

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Linda Leto,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1114
Parcel No. 291/00448-016-000

On January 22, 2010, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Linda Leto, requested that her appeal be considered without hearing and submitted evidence in support of her petition. She was self-represented. The Board of Review designated Assistant County Attorney, David W. Hibbard, as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, and being fully advised, finds:

Findings of Fact

Linda Leto, owner of property located at 1811 NW 80th Court, Clive, Iowa, appeals from the Polk County Board of Review decision reassessing her property. According to the property record card, the subject property consists of a four-level split foyer dwelling having 1636 total square feet of living area, a full 1560 square-foot basement with 980 square feet of finish, and a two-car basement garage. The property is also improved by a 792 square-foot patio and has a 50% brick exterior. The main dwelling was built in 1967, is in normal condition, and has a 4+10 quality grade. The dwelling is situated on a 0.257 acre site. The real estate was classified as residential on the initial assessment of

January 1, 2009, and valued at \$203,800, representing \$34,400 in land value and \$169,400 in improvement value.

Leto protested to the Board of Review on the ground the assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a); and that the property is assessed for more than authorized by law under section 441.37(1)(b). She claimed that \$184,500; allocated \$34,400 to land and \$150,100 to the dwelling was the actual value and a fair assessment of the property. The Board of Review granted the protest stating, "The assessed value of this property was changed because it was not equitable with similar property in the area." The assessed value was changed to \$188,200, allocated \$34,400 to land value and \$153,800 to dwelling value.

Leto filed her appeal with this Board and urged the ground that there was a downward change in value under sections 441.37(1) and 441.35(3). Because the ground of downward change is only appropriately pled in a non-assessment or "interim" year, we do not consider this basis for relief. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). However, we note, that the appellant's claim of downward change in value in an assessment year is akin to a challenge on market value, a ground she has already pled before the Board of Review.

Leto submitted information concerning 17 residential sales that occurred between 2006 and 2009 which, in her opinion, indicated declining property values in her neighborhood. Only three of the sales occurred in 2008. The first group identified consisted of six homes which have comparable dwelling and land square footages and sold for less than her assessed value. However, none of the 2008 sales were in the group Leto considered comparable to her property. The second group of homes consisted of six properties with more living area and land, but sold for less than Leto's current assessed value. The third group sold for more than the assessed value of the subject property but had significantly more square footage of dwelling or land, or was newer justifying a higher sale price.

Address	Dwlg SF	Land SF	Built	Sale date	Sale price	Sale Yr AV	2009 AV
Subject	1636	11,200	1967				188,200
1962 NW 90th St	1716	11,000	1968	9/27/2007	156,000	158,300	156,300
2060 NW 81st St	1552	12,600	1960	10/9/2006	178,900	167,200	167,200
1833 NW 80th Pl	1880	10,756	1965	6/14/2006	170,660	180,100	180,100
8887 Summit Dr	1854	11,280	1967	2/16/2006	180,000	180,300	178,100
1875 NW 80th Pl	1852	10,756	1965	2/6/2006	157,000	141,400	141,400
1860 NW 80th Pl	1542	10,800	1966	1/19/2006	172,000	165,300	165,300
8051 Garrison Rd	1820	12,376	1964	8/4/2008	153,000	171,800	172,400
8011 Garrison Rd	1818	16,169	1965	6/12/2008	170,500	177,700	170,300
1780 NW 80th Ct	1877	12,492	1986	7/29/2007	187,500	205,300	205,300
1762 NW 80th Pl	1988	11,648	1967	1/30/2007	184,500	196,800	196,800
1890 NW 80th Ct	1991	12,375	1968	8/30/2006	197,150	203,450	203,450
2174 NW 81st St	1716	24,365	1965	3/21/2006	195,000	186,600	186,600
7660 Harbach Dr	2254	25,065	1968	7/2/2008	247,500	255,900	255,900
1840 NW 89th Ct	1888	12,012	1991	8/27/2007	210,000	211,300	206,200
1525 NW 78th St	1584	60,240	1967	6/29/2007	236,500	232,000	232,000
2132 NW 89th St	2358	13,176	1969	11/1/2006	210,000	224,600	193,000
8920 Luin Dr	1981	13,696	1992	8/3/2006	241,000	253,700	250,600

She maintains that (1) an aging neighborhood and infrastructure; (2) proximity to a large number of commercial and industrial properties; and (3) an abundance of multi-family residential properties, such as apartments and duplexes, all contribute to the decline of property values in the area. Leto also provided additional sales that occurred in 2009 which were all after the January 1, 2009, assessment date. Because Leto's sale and assessment data (reported above) did not reflect comparable 2008 sales, lacked necessary adjustments and was not fully analyzed, it is of limited value in determining the issue of over-assessment.

Dennis Loll of Des Moines Real Estate Services in Norwalk completed an appraisal of the property at the request of the Board of Review. He described the property location as a "stable neighborhood with few sales and fairly quick marketing time." He inspected the interior and exterior of the property and retrospectively valued the property as of the assessment date. Loll noted that the subject property had below average condition with a mostly dated interior and some deferred

maintenance. Some past plumbing problems resulted in drywall damage in rough repair. He observed older electrical fixtures, a very dated kitchen with original built in appliances and non-functioning windows and doors.

Loll developed the sales approach to valuation considering the subject property in an "as is" condition on the assessment date. He identified five comparable properties in close proximity to the subject property with unadjusted sale prices per square foot ranging from \$93.78 to \$132.58 and a median of \$109.80 per square foot. The subject property is assessed at \$115.04 per square foot. Loll adjusted for gross living area, basement size and finish, condition, site size, location, and amenities. Adjusted sale prices ranged from \$178,000 to \$187,960 with a median of \$177,500. In Loll's opinion the subject property had a value of \$178,000 as of January 1, 2009.

Reviewing all the evidence, we find the evidence supports Leto's contention that her property was assessed for more than authorized by law as of the assessment date. Further, we find the Loll appraisal is the most credible evidence of the fair market value of the Leto property as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

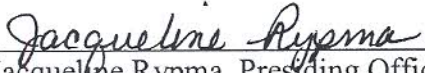
Leto challenged the assessment on the basis that there had been a downward change in value of the property. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We find the Loll's appraisal supports the claim that the property is over-assessed. Further, we rely on his appraisal as the most credible evidence of the subject property's fair market value as of the assessment date.

Viewing the evidence as a whole, we determine that substantial evidence supports Leto's claim of over-assessment as of January 1, 2009. We, therefore, modify the Leto property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$178,000, representing \$34,400 in land value and \$143,600 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review, is modified to \$178,000, representing \$34,400 in land value and \$143,600 in dwelling value.

Dated this 16 day of MARCH 2010.


Jacqueline Rypma, Presiding Officer


Richard Stradley, Board Member


Karen Oberman, Board Chair

Copies to:
Linda. Leto
1811 NW 80th Court
Clive, IA 50325-5609
APPELLANT

David W. Hibbard
Assistant Polk County Attorney
111 Court Avenue, Room 340
Des Moines, IA 50309-2218
ATTORNEY FOR APPELLEE

Jamie Fitzgerald
Polk County Auditor
120 2nd Avenue
Des Moines, IA 50309

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-16, 2010</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	